

### **Remarks**

Claims 1-4, 9 and 11-3 are now pending. No claims have been amended, canceled, or added in this reply. Reconsideration of the instant application is respectfully requested in light of the following remarks which were discussed by the Examiner and the undersigned in the telephone conference of September 26, 2005.

#### **I. THE CLAIMED INVENTION IS PATENTABLE OVER SHANA'A**

The Examiner rejected the pending claims under 35 U.S.C. 103(a) as being obvious in view of U.S. Patent No. 6,737,394<sup>1</sup> issued to Shana'a (hereinafter "Shana'a"). While the Examiner acknowledged that Shana'a "does not require such a composition that is free of amphoteric surfactants with sufficient specificity to constitute anticipation." Nevertheless, the Examiner concluded that "[i]t would have been obvious to a person of ordinary skill in the art at the time of the invention to have formulated a composition . . . which was free of amphoteric surfactants, because such compositions fall within the scope of those taught by Shana'a et al."

In reply, applicants respectfully submit that Shana'a does not teach or suggest any composition of the claimed invention, and fails to teach, suggest, or recognize that certain compositions formulated to be substantially free of amphoteric surfactants (such as the claimed compositions) tend to exhibit unexpectedly low irritation properties as compared to other compositions formulated to be substantially free of amphoteric surfactants but within the broad disclosure of Shana'a<sup>2</sup>. Rather, Shana'a makes no distinction in irritation associated with any compositions, within the broad disclosure thereof, that may be substantially free of amphoteric surfactant. Accordingly, one of skill in the art would have no motivation to select the specific components and amounts of such components

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<sup>1</sup> Applicants respectfully do not necessarily agree that this reference is properly cited as prior art and hereby reserve the right to swear behind such reference.

<sup>2</sup> For example, applicants reference the previously submitted Rule 132 Declaration of Joseph Librizzi wherein composition 22 (within the claimed invention) has significantly higher MTT and lower LDH indicating significantly lower irritation than composition 23 (outside claims but potentially within Shana'a). At certain dilutions the values of composition 22 are even comparable to compositions comprising amphoteric (20 and 21) which amphoteric are known to reduce irritation in such compositions.

from the very broad laundry list of components and possible amounts described in Shana'a and formulate with low levels of amphoteric to achieve the compositions and unexpected benefits of the claimed invention.

With regard to the Examiner's assertion that the data provided previously in the 132 Declaration is contrary to the claimed unexpected results because compositions comprising amphoterics (such as composition 20) tend to have lower irritation, applicants note that such comparison does not run counter to the unexpected results indicated for the claimed compositions. It is well-known in the art that the addition of amphoterics to a formulation may tend to reduce the irritation associated therewith. However, it is unexpected that certain formulations substantially free of amphoterics (such of the claimed compositions) would differ in irritation properties from other formulations substantially-free of amphoterics primarily due to the selection of a particular hydrophobically-modified polymer for use therein (compare compositions 22 and 23 from Rule 132 Declaration). In addition, it is surprising that the claimed compositions would exhibit irritation properties as least as good as certain amphoteric formulations, despite being free of amphoterics themselves (compare, for example, MTT data from compositions 22 and 21 at 5% dilution).

In light of the above, it is clear that Shana'a fails to teach or suggest each and every aspect of the claimed invention and fails to suggest or recognize the unexpected results discovered by applicants to be associated therewith. One of skill in the art would not be motivated by Shana'a to combine the particular surfactants and hydrophobically-modified polymers in a composition substantially free of amphoterics to achieve such results. Accordingly, the Examiner's rejection should be withdrawn and the claims allowed.

## **II. THE DOUBLE PATENTING REJECTIONS ARE OVERCOME**

The Examiner rejected the claims for obviousness-type double patenting over U.S. Application Serial Nos. 10/650,226 and 10/650,495. While applicants do not necessarily agree with such rejections, to facilitate prosecution, a terminal disclaimer over each such application has been filed herewith. Accordingly, the double patenting rejections should be withdrawn and the claims allowed.

### **III. CONCLUSION**

In light of the above remarks, applicants respectfully submit the application is in condition for allowance and requests an early notice of allowance for this application. Should the Examiner have any questions regarding this submission, please contact the undersigned.

Respectfully submitted,

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